

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 FORT WORTH DIVISION

4 UNITED STATES OF AMERICA . CRIMINAL ACTION NO.  
5 v. . 4:05-CR-040-Y  
6 DOUGLAS SOVEREIGN SMITH, JR. . Fort Worth, Texas  
7 . March 11, 2014  
8 . . . . .

9 TRANSCRIPT OF PROCEEDINGS  
10 (Revocation Hearing)  
11 BEFORE THE HONORABLE TERRY R. MEANS  
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the Government: MS. NANCY LARSON  
15 United States Attorney's Office  
16 801 Cherry Street, Suite 1700  
17 Fort Worth, Texas 76102-6897  
18 (817) 252-5200

19 For the Defendant: MR. JEFF A. KEARNEY  
20 Kearney Wynn  
21 3100 West 7th Street  
22 Suite 420  
23 Fort Worth, Texas 76107  
24 (817) 336-5600

25 Court Reporter: MS. ANA P. WARREN  
U.S. District Court Reporter  
501 W. 10th Street, Room 502  
Fort Worth, Texas 76102-3637  
(817) 850-6681

Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

## PROCEEDINGS

(Commencing, 11:30 a.m.)

3 THE COURT: Once again, this is Case Number  
4 4:05-CR-040-Y, United States of America versus Douglas  
5 Sovereign Smith, on a petition for offender under  
6 supervision.

7           Mr. Smith, will you please step to the lectern along with  
8           your counsel?

9           In the petition for offender -- first of all, will you  
10          please acknowledge your presence in court for the record by  
11          stating your full name?

12 DEFENDANT SMITH: My name is Douglas Sovereign Smith,  
13 Jr.

14 THE COURT: Mr. Smith, it is alleged in a petition  
15 for offender under supervision that you have violated certain  
16 conditions of your supervised release. As for the first  
17 allegation under Roman Numeral Paragraph or Section I, I find  
18 that the nature of noncompliance doesn't fit with the  
19 violation of the additional condition. So I strike that, and  
20 we'll proceed to Number 2.

21 The nature of compliance -- noncompliance there is that on  
22 May 14, 2013, you reported to the probation office for an  
23 office visit with a thumb drive in your possession and  
24 reported it contained a manuscript you wrote while you were in  
25 prison. That would be a violation of the additional condition

1 prohibiting you from possessing portable storage devices such  
2 as thumb drives.

3 And the Roman Numeral III, it is alleged that on  
4 November 9, 2013, Senior U.S. Probation Officer Linda Warner  
5 witnessed you accessing the internet without the permission of  
6 the probation office, and that would be a violation of the  
7 additional condition that you not possess or access a  
8 computer.

9 How do you plead to each of these allegations against you,  
10 sir, true or not true?

11 DEFENDANT SMITH: To allegation 2, it is true. To  
12 allegation 3, it is not true.

13 THE COURT: Okay. Does the government have anything  
14 to present to the Court in support of the defendant's plea of  
15 true as to 2 and in opposition to his not true plea as to 3?

16 MR. KEARNEY: Your Honor, before she answers that,  
17 may I add something?

18 THE COURT: Yes, sir.

19 MR. KEARNEY: The issue on true as to Roman Numeral  
20 II is he did have the flash drive, but he had it for the  
21 purpose of bringing it to the probation office to ask her  
22 about something, what he can do with it. So I don't think --  
23 true, he did possess it, but the reason he possessed it I  
24 think the evidence will show is that he possessed it for the  
25 purpose of bringing it to the probation officer to ask her how

1 to access it under the rules.

2 So that's -- you know, we don't want to belabor this  
3 point, but he did, true, possess it, but the reason he  
4 possessed it I think is important.

5 THE COURT: I agree. Let me, perhaps, shorten this  
6 proceeding.

7 I'll just tell you, Ms. Larson, based on what I have  
8 before me, I'm disinclined to revoke. Now, if you believe  
9 strongly that I need to, I'll hear whatever you have, but what  
10 we have here are somewhat technical violations -- they're  
11 violations, but they are technical violations, and I think  
12 that, based on what I have before me now, that the proper  
13 disposition is to decline to revoke and to allow the  
14 supervised release to continue making clear in the record, as  
15 I would do, that the allegations in Sections 2 and 3 of the  
16 petition remain unadjudicated and may be counted against  
17 Mr. Smith in any subsequent hearing.

18 Now, if you believe that these are more than technical  
19 violations and should result in revocation, you certainly are  
20 free to prove that.

21 MS. LARSON: Well, Your Honor, the government  
22 believes after speaking with the probation officer who is  
23 supervising him as well as his therapist, that this is really  
24 part of a larger problem, because as we see it, the nature of  
25 Mr. Smith's crime and some of the things that he's admitted to

1 in his presentence report and in his therapy, they are  
2 boundary violations, and what we have here is repeated  
3 boundary violations.

4 This petition was not filed in a vacuum. He was told  
5 repeatedly. He was given graduated sanctions, but he  
6 continues to push the envelope and always asks for forgiveness  
7 rather than permission, and he has been admonished  
8 repeatedly.

9 So based on that -- I don't want the Court to think I'm  
10 being unreasonable, but based on that, I think the Court  
11 should hear from the probation officer and the therapist.

12 THE COURT: All right. We'll hear from the  
13 government, and then we'll allow the defendant to present his  
14 viewpoint once they are done. You may be seated.

15 Call your first witness.

16 MS. LARSON: The government calls Linda Warner.

17 THE COURT: Good morning. Please raise your right  
18 hand and be sworn.

19 (Witness sworn by the Court)

20 THE COURT: Please be seated.

21 I don't know why we have got that big pot up there. I  
22 guess we thought you might need it to stay awake. I don't  
23 know.

24 LINDA WARNER, testified under oath as follows:

25 **DIRECT EXAMINATION**

1 BY MS. LARSON:

2 Q. Good morning. Would you please state your name?

3 A. Linda Warner.

4 Q. How are you employed?

5 A. I'm a United States Probation Officer in the Eastern  
6 District of Texas.

7 Q. How long have you been so employed?

8 A. I've been employed with the Eastern District of Texas for  
9 about 13-and-a-half years. Prior to that, I was a probation  
10 officer in Dallas County for 11 years.

11 Q. Do you supervise Mr. Douglas Smith?

12 A. Yes, I do.

13 Q. And do you see him in the courtroom today?

14 A. Yes, I do.

15 Q. Is he seated next to his counsel at the -- to my left?

16 A. Correct, yes.

17 Q. Now, I would like to direct your attention to the second  
18 violation, which is dated May 14. Can you explain to the  
19 Court the circumstances of that violation?

20 A. Mr. Smith came into the probation office and handed me a  
21 thumb drive, and I advised him that he was in violation of his  
22 conditions of supervision by possessing that.

23 Q. Now, had he known that prior to seeing you?

24 A. Yes. He was aware of the condition. It was read to him.

25 He was given a copy of them. Previous reports -- every report

1 he is -- I'm sorry. Every office visit when he reports to me,  
2 he is asked if he has possessed a thumb drive. So he is fully  
3 aware he's prohibited from possessing that.

4 Q. Did he tell you how he came to possess it?

5 A. Yes. He said that when he was in the Bureau of Prisons,  
6 he wrote a manuscript -- I'm sorry. It's an autobiography.  
7 I'm not sure exactly. He e-mailed it to a friend in Michigan.  
8 The friend in Michigan sent it to someone he knows in his sex  
9 addict group in Denton, and that person put it on a thumb  
10 drive and gave it to him to be edited.

11 Q. Now, after he turned the thumb drive over to you, what did  
12 you do other than admonish him that he was not suppose to have  
13 it?

14 A. I still have possession of the thumb drive. I requested  
15 that -- well, I requested from the U.S. Attorney's Office in  
16 the Eastern District of Texas if they would -- well, first, I  
17 asked if Lyles would look at the thumb drive, and he said, no,  
18 he didn't have a -- I'm sorry.

19 Q. Who is Lyles?

20 A. Lyles Arnold. I'm sorry, his treatment therapist. When I  
21 received the thumb drive, I asked my supervisor if I could put  
22 it into my computer and look at it to see what was on it. She  
23 said, no, we don't have a forensic computer. So then I asked  
24 his treatment therapist, Lyles Arnold, if he had a computer  
25 where he could put the thumb drive in it to look to see what

1 was on it. He said, no, he did not.

2 So I contacted the U.S. Attorney's Office in the Eastern  
3 District of Texas to ask them if they had a forensic computer.

4 She said -- oh --

5 Q. Okay. This is probably a little bit too much detail.

6 A. Right. I'm sorry.

7 Q. Why don't we just move on.

8 A. Needless to say, I haven't looked at it. Last week I had  
9 the first opportunity to see what was on it.

10 THE COURT: And?

11 THE WITNESS: And what is on it is somewhat of an  
12 autobiography. It also discusses his therapy, his opinion  
13 regarding his addiction.

14 THE COURT: No pornography?

15 THE WITNESS: No pornography. It discusses a little  
16 bit about his instant offense and possession of the  
17 pornography but no new pornography.

18 BY MS. LARSON:

19 Q. Did you do anything in terms of graduated sanctions with  
20 him with respect to the thumb drive?

21 A. Correct. He was admonished for possessing the thumb drive  
22 and instructed that in the future he needs to use the tools  
23 that he has learned in treatment, not to accept a thumb drive  
24 if somebody presents it to him.

25 Q. Now, I would like to direct your attention to the internet

1 violation. Can you explain when that happened and the  
2 circumstances surrounding it?

3 A. I was during an unannounced home visit and approached his  
4 house. He has a window right next to the door where his  
5 office is right there, and through the window, I could see him  
6 at his desk on a computer. When he came to the door, I asked  
7 him what he was doing. He explained to me that he was  
8 listening to a financial radio show via the internet. So I  
9 asked him to go into the office so I could see what he was  
10 doing. He had his computer set up in one direction and  
11 another computer open in the opposite direction, and the  
12 internet was pulled up. I could see a news web page pulled  
13 up.

14 Q. And when you say it was in the opposite direction, the one  
15 that was actually accessing the internet was faced away from  
16 him?

17 A. Correct.

18 Q. Did you encounter his wife at some point?

19 A. Yes, I did. She acknowledged that she opened the internet  
20 for him and that he was listening to a financial program on  
21 the internet. She also made a comment that, you caught us,  
22 and she pretty much tried to take the blame for him violating  
23 his conditions and accessing the internet.

24 Q. Now, how is it that his wife understands that that is a  
25 violation?

1 A. She has gone through the chaperone program at the  
2 treatment provider, and she is aware that he is not allowed to  
3 have access to the internet. We've also discussed it during  
4 pre-release. We discussed her having the password protect on  
5 her computer that he does not know. So she's fully aware that  
6 he is prohibited from accessing the internet.

7 Q. Now, in relation to these two -- well, and then did you  
8 decide to file a petition?

9 A. Yes. I decided to file a petition after that. He had the  
10 failed polygraph in between these two violations. After the  
11 failed polygraph, we did graduated sanctions after that. We  
12 prohibited him from traveling, prohibited him from having  
13 contact with children under the age of 18 with or without a  
14 chaperone, which included his grandchildren. So it was  
15 another graduated sanction, and then he continued to violate  
16 by accessing the internet.

17 Q. Now, directing your attention to October of 2013, did  
18 something happen then that also concerned you?

19 A. Yes. It was reported --

20 MR. KEARNEY: Your Honor, we're going to object  
21 to anything outside of this petition. We're not prepared to  
22 defend against anything that's not in relation to -- not  
23 reported in some manner not the basis of this. I'm going to  
24 object to it.

25 THE COURT: I'll allow it. Overruled.

1 A. He reported to his treatment provider that him and his  
2 wife went to the Lion King in Fair Park during the state fair,  
3 which would have been something he should not have done. He  
4 should have received permission prior because there were a lot  
5 of children there to see the Lion King. So it was an  
6 inappropriate place for him to be, which he is fully aware of.  
7 It's discussed in his treatment therapy group as well as with  
8 me.

9 BY MS. LARSON:

10 Q. And, also, his wife would be aware of that?

11 A. Yes. She went through a chaperone program. So she is  
12 aware of that as well.

13 THE COURT: Just as an aside, had he said, we want to  
14 go see Lion King. My wife would be with me. Would you likely  
15 have granted him permission?

16 THE WITNESS: He would have done a safety plan with  
17 his treatment provider, and it would probably have been  
18 denied.

19 MS. LARSON: That's all I have for this particular  
20 witness, Your Honor.

21 THE COURT: Cross examination?

22 MR. KEARNEY: Yes, Your Honor.

23 THE COURT: Go ahead, sir.

24 **CROSS EXAMINATION**

25 BY MR. KEARNEY:

1 Q. As to this Lion King issue, you know that he did disclose  
2 it and discuss it with his group and Lyles Arnold?

3 A. Yes.

4 Q. Ahead of time?

5 A. No, I was not aware he discussed it ahead of time.

6 Q. As to the thumb drive, he walked in and he handed you the  
7 thumb drive. Is that right?

8 A. Correct.

9 Q. And he said, I just got this, and I want to in some way  
10 get the book I wrote, the manuscript of the book I wrote, in  
11 the penitentiary off of this, and can you tell me how I can do  
12 that under the rules? That's what he asked you to do. Is  
13 that correct?

14 A. I don't recall. I think once I saw the thumb drive, I  
15 just said, you're in violation of your conditions of  
16 supervision, and confiscated the thumb drive because it is  
17 considered contraband, but I don't --

18 Q. Let me ask you to answer my question. Did he tell you  
19 that he wanted to get your permission and advice on how to get  
20 the manuscript off the thumb drive so he could put it on his  
21 word processor and edit it? Wasn't that the point of the  
22 exercise of bringing the thumb drive?

23 A. I don't recall that.

24 Q. Well, after you took it and said, you're in violation, was  
25 that the end of the story for you?

1 A. No. He then explained what was on the thumb drive. I  
2 asked him what was on the thumb drive, and he told me what he  
3 reported to be on there. He said that he wanted to edit it.  
4 So I assumed he was going to put it on a computer, but he  
5 didn't ask me how to put it on a computer. He didn't ask me  
6 permission prior to possessing the thumb drive. He's fully  
7 aware of his condition not to possess, that he should have  
8 told the person, don't give me the thumb drive. Let me staff  
9 with my officer first.

10 Q. So you didn't even ask him why he was bringing it to you.  
11 You just said, you're in violation. End of story?

12 A. Pretty much.

13 Q. Okay. And then he did volunteer he was bringing it to you  
14 because it had his manuscript and he wanted to edit it. Is  
15 that right?

16 A. Correct.

17 Q. Now, you didn't search him and find it?

18 A. No.

19 Q. He brought it to you to ask you something about it. Is  
20 that correct?

21 A. Correct.

22 Q. And handed it to you?

23 A. Correct.

24 Q. And what you found on it was his manuscript that had been  
25 written?

1 A. Yes, sir.

2 Q. Did you find anything else on it?

3 A. No, sir.

4 Q. Were you even interested in why he wanted you to have it  
5 and what he wanted -- what he wanted to ask you about it?  
6 Were you even interested in that?

7 A. No, I'm not. I'm interested in complying with his  
8 conditions of supervision.

9 Q. When you went to his house, you said, when you looked  
10 through the window, he was sitting at a computer?

11 A. Yes.

12 Q. And you know that he had a computer that had all internet  
13 access removed from it so he could use it as a word  
14 processor?

15 A. Correct.

16 Q. And you had given him permission to use that computer as a  
17 word processor?

18 A. Well, it's -- I did.

19 Q. You did?

20 A. Well, he did it, and then he asked permission  
21 afterwards.

22 Q. And you gave him permission?

23 A. Correct.

24 Q. Okay. And he produced information to you that the  
25 computer had been altered where it had no internet access. Is

1 that correct?

2 A. Correct.

3 Q. And the computer he was sitting at was, in fact, the  
4 computer that had no internet access?

5 A. Correct.

6 Q. Okay. The computer that was facing the other way was a  
7 laptop. Isn't that correct?

8 A. Yes.

9 Q. And the laptop was not facing towards him, right?

10 A. No, it was not.

11 Q. You did not see him touch it?

12 A. No, I did not.

13 Q. You did not see him access it?

14 A. No, I did not.

15 Q. You didn't see him controlling it in any way?

16 A. No. He did have access to it, but, no, I did not see  
17 that.

18 Q. Well, access is kind of a broad term. When you access a  
19 computer, you do something to it to make it run. Is that what  
20 accessing a computer is?

21 A. I don't know the definition. I'm sorry.

22 Q. Okay. He is prohibited from accessing a computer and you  
23 don't know the definition?

24 A. Well, accessing a computer in my mind would be he has  
25 access to it.

1 Q. Well, if there is a computer in a house that someone lives  
2 in, is that a violation, if they have a wife that has a  
3 computer?

4 A. No, because we have password protect. That's why we went  
5 through the rules regarding her having password protect. The  
6 computer was in the home. I was aware of the computer, and  
7 his wife agreed to have password protect so he could not  
8 access it.

9 Q. Okay. Did you talk to his wife about what was on the  
10 computer and that she brought it into the room, and she had it  
11 faced towards her and that the volume was playing, that he  
12 could hear it?

13 A. Yes. They told me what they were doing it. He was  
14 listening to it.

15 Q. Did you further inquire and learn that their son was  
16 involved in an education reform project up in Minnesota and  
17 that he had e-mailed to Mr. Smith's wife a podcast talking  
18 about his education reform program and that she decided to  
19 bring it in and allow Mr. Smith to listen to it but not touch  
20 the computer, not access it or anything else?

21 A. I didn't know the details regarding it was a program that  
22 his son created. I just knew it was something that was from  
23 his son. I don't know the details regarding the program, and  
24 his wife did say that she opened the computer and accessed it  
25 for him, played it for him.

1 Q. And she's the one that accessed it. As a matter of fact,  
2 she said he didn't ask her to do it. She did it?

3 A. Correct.

4 Q. Okay.

5 MR. KEARNEY: Pass the witness.

6 MS. LARSON: I have nothing further.

7 THE COURT: Pardon?

8 MS. LARSON: Nothing further.

9 THE COURT: You may step down, ma'am. Thank you.

10 MS. LARSON: The government calls Lyles Arnold.

11 MR. KEARNEY: Your Honor, Mr. Arnold is a witness as  
12 to Roman Numeral I that you have not -- that you have not  
13 allowed, and I don't know that he has any factual information  
14 about II and III.

15 THE COURT: Well, I'm not going to allow you to  
16 determine what her witness is going to testify about.

17 Please raise your right hand and be sworn.

18 (Witness sworn by the Court)

19 THE COURT: Please be seated.

20 LYLES ARNOLD, testified under oath as follows:

21 **DIRECT EXAMINATION**

22 BY MS. LARSON:

23 Q. Good morning, Mr. Arnold. Will you please state your name  
24 for the record?

25 A. Lyles Arnold.

1 Q. And how are you employed?

2 A. I'm a licensed professional counselor and a licensed sex  
3 offender treatment provider in private practice in Plano,  
4 Texas.

5 Q. How long have you been a sex offender treatment  
6 provider?

7 A. About 25 years.

8 Q. Do you recognize Mr. Smith in the courtroom today?

9 A. I do.

10 Q. And how do you recognize him?

11 A. He is sitting at the defense table.

12 Q. Is he one of your clients?

13 A. Pardon me?

14 Q. Is he one of your clients?

15 A. Yes, he is.

16 Q. How long have you been working with him?

17 A. He was evaluated in January of 2013, so just a little over  
18 a year now.

19 Q. Do you have any information about his possession of a  
20 thumb drive? Did you discuss it with him?

21 A. I learned about it, actually, originally from Ms. Warner,  
22 I believe simply stating that he had been in possession of a  
23 thumb drive. She wanted to know if I would look at the  
24 contents of the thumb drive, and I did not want to do that.

25 Q. Did you have any discussion with Mr. Smith about it?

1 A. Prior to that?

2 Q. At any time.

3 A. Oh, at any time?

4 Q. Yes.

5 A. Simply that the event had transpired as described in  
6 earlier testimony, that if he wasn't suppose to have portable  
7 devices, then he wasn't suppose to have portable devices.

8 Q. Did he tell you that he already knew that he wasn't  
9 suppose to have it, or did you just re-admonish him that he  
10 wasn't suppose to have it?

11 A. I didn't do much with that incident. It was something  
12 that his officer had addressed, and I just kind of  
13 re-admonished him and told him to do what he was suppose to do  
14 to be in compliance with those stipulations of his  
15 probation.

16 Q. Now, what do you know with respect to the internet access  
17 issue?

18 A. The one referenced in the previous testimony?

19 Q. Yes.

20 A. I know that Mr. Smith is well aware that he is not to  
21 access the internet. I was looking at some of my notes prior  
22 to coming in here, and we addressed internet issues with him  
23 in the summer where he was going to seek permission to have  
24 some internet access, perhaps. When this episode occurred, it  
25 was my understanding that it was a podcast, I think something

1 that his son -- his son was the speaker at a program and that  
2 Ms. Warner just happened to show up for a home visit at that  
3 time when Mr. Smith was listening to that podcast via the  
4 internet.

5 Q. Is he allowed to listen to podcasts on the internet?

6 A. His conditions of probation stipulate no internet access  
7 whatsoever.

8 Q. And you can't give him permission to do that, can you?

9 A. No, I cannot.

10 Q. Are you familiar with the chaperone program?

11 A. Yes.

12 Q. And are you familiar with Mr. Smith's wife going through  
13 that program?

14 A. Yes. I trained her in the chaperone program.

15 Q. And as part of her training, was she instructed about  
16 internet usage?

17 A. One of the stipulations of the chaperone contract she  
18 signed, as do all chaperones that I train, is that they will  
19 be observing whether or not the individual on probation is  
20 complying with the terms and conditions of his probation, and  
21 they are to advise the treatment provider or the probation  
22 officer if that person is in violation of the terms and  
23 conditions of their probation.

24 MS. LARSON: Your Honor, that's all I have on the  
25 particular violations, but Mr. Arnold does have other

1 information pertaining to, perhaps, what the Court would like  
2 to do about the violations, what the Court might want to  
3 consider.

4 THE COURT: I'll hear it.

5 MS. LARSON: Okay.

6 BY MS. LARSON:

7 Q. Mr. Arnold, going back to the failure of the lie detector  
8 test?

9 A. Yes.

10 Q. What's the significance of that?

11 A. The polygraph examination he failed in September was his  
12 sexual history polygraph. We have individuals go through  
13 their entire sexual history so that we can understand the  
14 scope of what their sexual behavior has been so that they can  
15 understand how they ended up, you know, in a place in their  
16 life where they elected to commit sexual offenses. So when he  
17 showed deception, it indicated, typically, in the sex history,  
18 that you're deliberately lying about something or lying by  
19 omission, withholding information.

20 Q. With respect to -- were you familiar with the state fair  
21 incident?

22 A. Only after the fact.

23 Q. And if an offender wants to go to something like that,  
24 what steps does he have to take in order to do that?

25 A. The procedure that's made very, very clear in my program

1 is that I don't have the authority to grant permission for an  
2 offender to do anything. So the typical protocol is that they  
3 will present a safety plan to me in the group, and we will  
4 either approve that plan or disapprove that plan. If we  
5 approve the plan, then the offender is clearly directed to  
6 seek permission from the probation officer. We're approving  
7 it, but the officer is the one who grants the permission.

8 Q. And how do you know that he knew about the safety plan and  
9 that he should have prevented it to the group?

10 A. We talk about safety plans continuously in our treatment  
11 program, and with Mr. Smith, we actually addressed this issue  
12 very specifically because he had had a trip planned to see his  
13 son in Washington State, and part of that trip was to include  
14 going to an outing to watch. I believe, his 12-year-old  
15 grandson played football. I was concerned about him doing  
16 that because in Texas we have a law that prohibits sex  
17 offenders from going into anything designated as a child  
18 safety zone until they have been on probation at least two  
19 years. Mr. Smith had not been on probation two years. So  
20 this issue of going into child safety zones was very  
21 specifically addressed in his case during the summertime. I  
22 believe that was in the July-August time frame when he was  
23 planning on a September trip to Washington.

24 It was brought up in testimony earlier suggesting that,  
25 perhaps, I knew about the outing to the State Fair of Texas to

1 see the Lion King prior to him doing that. That is absolutely  
2 untrue.

3 Q. Is it fair to say that at the point that Mr. Smith went to  
4 the State Fair Lion King, that it's reasonable to conclude  
5 that he understood that was a child safety zone?

6 A. In my opinion, anyone who has been in my treatment program  
7 for a month to six weeks is well versed in the concept of  
8 child safety zones at least to the point where they would  
9 raise a question before presuming to do something like that.  
10 They may not know every single area in the metroplex that can  
11 be designated as a child safety zone, but they know it's a  
12 constant issue that they need to be mindful of.

13 Q. Did you have any other issues with him regarding movies?

14 A. One of the things we do in treatment is we, again, have  
15 offenders generate safety plans for going to the movies  
16 because movies are places where minors may be present. There  
17 are also inappropriate movies in terms of a man on probation  
18 for a sexual offense. So we talk about the development of  
19 safety plans.

20 Mr. Smith did present a safety plan for going to the  
21 movies, but in the process of discussing that safety plan, it  
22 became apparent that he had already been going to movies prior  
23 to receiving the permission.

24 We, ultimately, did approve a safety plan for he and his  
25 wife to go to movies during daytime hours, Monday through

1 Thursday, at particular theaters like the Angelica, Magnolia.  
2 I believe Studio Movie Grill is another one that we tend to  
3 approve because there are restrictions on minors being at  
4 Movie Grill after certain hours, but he's never been given  
5 approved permission to attend the mainstream theaters like  
6 Cinemark or Tinsel Town or any of those AMC multiplex  
7 theaters.

8 Q. Are you aware of any inappropriate movie that he saw other  
9 than the Lion King show that was not approved?

10 A. He saw a movie, and I don't know that the movie would have  
11 been a violation of his probation because I don't know the  
12 movie, don't know the content of it, but given Mr. Smith's  
13 particular sexual issues, I questioned his judgment in going  
14 to see a movie that was heavily themed with a homosexual plot.  
15 I didn't understand that being a choice that he would have  
16 made.

17 Q. Other than what we've discussed, is there anything else  
18 from the group, the group counseling that you've learned, that  
19 causes you concern or that you think the judge should know?

20 A. I think that Mr. Smith -- you know, the good part of  
21 Mr. Smith is he comes to group. He has homework. He  
22 participates in group. He will give feedback. He receives  
23 feedback. And, you know, along the way, as he has engaged in  
24 things that have been in violation of treatment directives or  
25 probation directives, I think that there has been -- I can't

1 sit here and say there has been no correction of anything. I  
2 think he's corrected some things, but I also find Mr. Smith on  
3 a number of occasions, even as recently as December, you know,  
4 being manipulative in the way that he communicates with the  
5 group and the way that he communicates with me versus his  
6 supervision officer.

7 Q. And, generally speaking, how would you characterize the  
8 violations that have been alleged?

9 A. Are you talking specifically about the ones in the  
10 petition?

11 Q. And the concerns that you have?

12 A. Well, I heard Ms. Larson state earlier that -- she  
13 referenced boundaries. Sexual offenses are boundary  
14 violations. This Court has put certain boundaries on  
15 Mr. Smith that he needs to abide by, and I have found him to  
16 be a person who has consistently pushed those boundaries. So  
17 that raises a concern.

18 He often has claimed not to understand the rules. I don't  
19 think that that's honest on his part. I think Mr. Smith is a  
20 very bright man. He's a very accomplished man prior to being  
21 incarcerated. These rules aren't that complicated. So I will  
22 tell the Court the same thing I've told Mr. Smith on a number  
23 of occasions. I think he's manipulative in that way.

24 THE COURT: Do you think that Ms. Smith is an  
25 enabler?

1                   THE WITNESS: Yes. And I would not consider  
2 Ms. Smith to be an adequate chaperone at this point given the  
3 violations of his probation that have occurred while she was  
4 presumably the one supervising his activity.

5                   MS. LARSON: I have nothing further.

6                   THE COURT: Cross examination.

7                   **CROSS EXAMINATION**

8 Q. Dr. Arnold --

9 A. It's Mr. Arnold, for the record.

10 Q. It's Mr.? I'm sorry.

11                   Mr. Arnold, Mr. Smith is an active member in your  
12 treatment group?

13 A. That's true.

14 Q. He's in good standing?

15 A. Yes.

16 Q. You have not kicked him out?

17 A. I have not kicked him out.

18 Q. Do you expect him to be there next Monday if the judge  
19 permits him -- next Tuesday?

20 A. Tuesday.

21 Q. If the judge permits him to stay out?

22 A. Yes.

23                   MR. KEARNEY: Pass the witness, Your Honor.

24                   MS. LARSON: Nothing further.

25                   THE COURT: I have another question.

1           We're here today to decide whether his violations of his  
2 terms of supervised release are sufficient to cause the Court  
3 to send him back to prison, and part of that consideration is  
4 not only whether he's violated and whether any of those  
5 violations are worthy of being revoked, but, also, whether  
6 the -- such incarceration should be enforced for more than  
7 just retribution or punishment and should be accomplished  
8 instead for deterrence and for safety of the community.

9           What is your position as to -- or do you have any opinion  
10 as to whether an additional term of incarceration would  
11 accomplish the purposes of deterrence and protection of the  
12 public and, I guess, more particularly, under deterrence, the  
13 efforts that you are making or that others are making to  
14 secure Mr. Smith's compliance and his ability to avoid the  
15 behavior that got him in trouble in the first place.

16           THE WITNESS: Well, I don't make any kind of  
17 sentencing recommendations. I see myself, when I'm testifying  
18 in these kinds of cases, as being a person to provide  
19 information to the Court so that you can make a determination  
20 as to what you would want to do.

21           I do think that there has been an accumulation of  
22 violations of treatment and supervision directives that  
23 warrant a sanction, and you can argue that this process in and  
24 of itself has been sanctioned, you know, kind of a sanctioning  
25 experience for Mr. Smith. He's gone through expense, and I'm

1 sure he's had anxiety leading up to this proceeding. So on  
2 the spectrum of where we are today versus him returning to  
3 prison, that's not for me to decide --

4 THE COURT: I know that's my call. My question to  
5 you -- and you may not be able or willing to answer -- my  
6 question to you is, will it accomplish something important to  
7 this process of having him avoid future violations of the law,  
8 future violations of his terms, and will it accomplish  
9 something positive for the treatment that you are a part of?

10 THE WITNESS: It's just very difficult to say, Your  
11 Honor.

12 THE COURT: Okay.

13 THE WITNESS: Very difficult to say. I've had  
14 experiences that have fallen on both sides of that fence in  
15 these kinds of proceedings.

16 THE COURT: That's fine. Thank you.

17 Any questions responsive to mine?

18 MR. KEARNEY: No, Your Honor.

19 THE COURT: You may step down, sir. Thank you.

20 Is there more?

21 MS. LARSON: That's all the evidence we have, Your  
22 Honor.

23 THE COURT: Anything from the defendant?

24 MR. KEARNEY: No, Your Honor.

25 Your Honor, I do have one thing, and I don't know the

1 appropriate way to do this. If the Court is considering a  
2 sanction, we have some letters of what he's been doing --

3 THE COURT: Okay. Let's see them.

4 MR. KEARNEY: -- since he's been out. May I --

5 THE COURT: Yes. Hand them to Ms. Bush.

6 Well, I need some time anyway to think this over. So  
7 let's take about a ten minute recess and we'll reconvene. I  
8 may stay right here but go on about your business.

9 (Hearing recesses, 12:05-12:15 p.m.)

10 THE COURT: I'm ready to reconvene.

11 Do you wish to speak on behalf of Mr. Smith before I make  
12 my decision?

13 MR. KEARNEY: Yes, Your Honor.

14 THE COURT: Please keep it brief.

15 Mr. Smith, go ahead and step to the lectern.

16 MR. KEARNEY: Your Honor, basically, as to the  
17 allegation Number 2 that involves the thumb drive issue,  
18 technically, it's a violation for him to possess it, but to  
19 take it directly to his probation officer, hand it to her and  
20 tell her what's on it and ask her advice about what to do with  
21 it, tell her what he wanted to accomplish, certainly, if it's  
22 a technical violation, it doesn't violate the purpose or  
23 spirit of the rule. The rule is, I think, designed so he  
24 won't have access to sexually explicit material, not that he  
25 takes something with none of that on it to a probation officer

1 and voluntarily takes it there for the purpose of asking her  
2 permission.

3 As to Number 3, Your Honor, accessing the computer, I can  
4 tell the Court I asked the probation officer if she had a  
5 definition of what accessing the computer was, and she said,  
6 no, she doesn't have a definition. She can't give anybody a  
7 definition. It is certainly vague. There is no evidence that  
8 he accessed this computer at all. As a matter of fact, she  
9 talked to his wife, and his wife said that she brought it to  
10 him. It was a podcast from her son. She started up the  
11 computer, and it was facing towards her, not him, and it was  
12 just playing a sound. If that's access to a computer, Your  
13 Honor, I guess if you hear somebody playing their I-Tunes on  
14 their computer or their iPad or their iPod, you can be  
15 accessing some kind of computer if you are listening to music.  
16 So I don't think it's a violation of the spirit of the rule.

17 Also, as to his lifetime prohibition of accessing the  
18 computer, I think that it runs afoul of United States versus  
19 Miller, 665 F.3d 114, as being an unreasonable restriction on  
20 his ability for a lifetime to access a computer, and under  
21 that theory, I don't think the Court should use that as the  
22 basis of any kind of revocation or supervised release.

23 As to the other things that were mentioned by Mr. Arnold  
24 about going to the movies or getting permission to go to the  
25 movies, there is nothing in his rules of probation that say he

1 can't go to a movie. That's not a condition of his supervised  
2 release.

3           What they know about the movies -- what they know about  
4 the movies is what he told them. He came to group. He asked  
5 them about movies. He volunteered he had been going to  
6 movies. He brought the issue up according to Lyles Arnold,  
7 and he brought the issue before the group to discuss it. He's  
8 not suppose to go where children congregate. That's not  
9 alleged in this petition, but when you go to a movie and what  
10 type of movie you go to, it could be a place where children  
11 don't congregate at all at that period of time. He can go to  
12 Wal-Mart, and children are certainly at Wal-Mart and that's  
13 permitted. It's such a nebulous area, and I think the key  
14 point is that Mr. Smith brought the issue up to Mr. Arnold.

15           THE COURT: Thank you.

16           MR. KEARNEY: Thank you.

17           THE COURT: Mr. Smith, do you wish to speak on your  
18 own behalf?

19           DEFENDANT SMITH: Yes, sir.

20           I had hoped never to be back in your court, and I'm sorry  
21 that I caused this hearing. I would have expected that  
22 probation would be easy for me, frankly, but I had followed  
23 some of the rules that have been difficult for me to  
24 understand, and I'm a pretty educated person.

25           Your Honor, nobody is more committed to me not

1 re-offending than I am. Before going to prison, you allowed  
2 me to spend four-and-a-half months in residential treatment at  
3 Santos Center for sex addiction. That saved my life. Before  
4 I went to prison, I attended 200 meetings of Sex Addicts  
5 Anonymous, Sexaholics Anonymous, because I want to change my  
6 life and because I found that that program works for me.

7 In prison, along with several other inmates, we organized  
8 the only program in the prison for sex offenders. It began as  
9 a Bible study program. We did Celebrate Recovery, a 12-step  
10 program, and for the last several years I was there, we had a  
11 Sex Addicts Anonymous group in the prison. To my knowledge,  
12 that's the only Sex Addicts Anonymous group in the federal  
13 prison. The chaplain was very helpful with us in that  
14 regard.

15 At my sentencing, I promised you that I would dedicate the  
16 rest of my life to helping other people and I have, and I  
17 tried to do that in prison and I have tried to do that  
18 since.

19 I have used my own experience, strength and hope to help  
20 others suffering from sex addiction to learn from my  
21 experiences. I attend four to five meetings of Sex Addicts  
22 Anonymous a week in Denton. I have an excellent sponsor.  
23 He's here today. I sponsor currently four men meeting with  
24 them on a weekly basis, talking to them on the phone on an  
25 almost daily basis attending meetings with them, all for the

1 purposes of helping them to not end up where I ended up.

2 THE COURT: Are you are working?

3 DEFENDANT SMITH: No, sir.

4 THE COURT: You're retired?

5 DEFENDANT SMITH: I am. I'm 70 years old.

6 THE COURT: Okay.

7 DEFENDANT SMITH: I've been elected to serve as the  
8 leader of one of the groups in Denton. I have rebuilt my  
9 relationships with my wife, Judy, and my children. My family  
10 relationships have never been better. My wife and children  
11 are here as are many of the people in the sex addiction  
12 programs that I participate in.

13 I've been denied the opportunity to contact my  
14 grandchildren for most of my probation. Some of my  
15 grandchildren I have not met or seen since I got out of prison  
16 14 months ago. I regret that very much, and I recognize that  
17 my behavior plays a role in that.

18 If you will allow me to continue on supervised release,  
19 Your Honor, I will do everything I can to comply with every  
20 one of the conditions of my release. Thank you very much for  
21 your time.

22 THE COURT: All right, sir. Thank you.

23 MR. KEARNEY: Your Honor, I wanted to mention, you  
24 have the letter from Douglas Smith, his son.

25 THE COURT: I do.

1                   MR. KEARNEY: Who has traveled here from the Seattle  
2 area. His other two sons are here. The one from Minnesota is  
3 here and, also, the one that lives locally here, Dan and  
4 Chris, and they have asked me to tell you that they would say  
5 the same things that Davis said in his letter. They have read  
6 it and they agreed with all of it. Thank you, Your Honor.

7                   THE COURT: Thank you. I read it.

8                   MS. LARSON: Your Honor, can I just clear up a couple  
9 of things?

10                  THE COURT: Yes.

11                  MS. LARSON: I just wanted to make a couple of  
12 points. One, we're not alleging it was a condition of  
13 probation for Mr. Smith to get the plans to go here or there  
14 and to go to movies, but it's clearly one of the things he has  
15 to do in connection with his therapy. So that's really a  
16 problem for him to be going places when that's something they  
17 discuss in group before they even present it to the probation  
18 officer.

19                  The other thing is the fact that he admits that he saw the  
20 movie or went here and there, he's got to do that because he's  
21 subject to polygraph examinations, and he's going to be asked  
22 those questions. So I just didn't want the Court to have a  
23 rosy picture of Mr. Smith when the conditions that he's  
24 subject to, which he full well understands, require that he  
25 has to tell on himself because --

1 THE COURT: Well, I agree with you, but he has  
2 certain conditions that he has to comply with, and we'll hold  
3 him to those, but the additional conditions that are placed on  
4 him by his therapist are not enforceable by the Court. So if  
5 his therapist has additional conditions or things that he  
6 requests that he do, that's between him and his therapist, and  
7 I'm in no position to revoke him for not doing exactly what  
8 his therapist tells him to do. And I'm concerned, just as you  
9 are, that we get full compliance with the conditions, but  
10 that's the limit of my power.

11 I'm going to deny the motion to revoke. However, I'm  
12 going to schedule a hearing for an update on the compliance  
13 with the conditions of supervised release in 90 days.  
14 Depending on what we hear there, I'll either hold another  
15 hearing in 90 days or have something to say at that point, or  
16 if there have been additional problems, I could revoke. All  
17 present allegations are still in existence as to Roman  
18 Numerals II and III in the petition for offender under  
19 supervision, and we'll go from there.

20 Any questions, Ms. Larson?

21 MS. LARSON: No, Your Honor.

22 THE COURT: Is that clear?

23 MR. KEARNEY: No, Your Honor. Thank you, Your  
24 Honor.

25 THE COURT: I'll send out an order for a follow-up

1 hearing in 90 days.

2 Mr. Smith, let's don't keep having problems. I gave you  
3 96 months instead of 210, but a lot of people have invested a  
4 great deal into you. So even though it's annoying and  
5 worrisome to have to tow the mark exactly, apparently, that's  
6 what you're going to have to do. So I encourage you to do  
7 that, and maybe there will be some more latitude later.

8 DEFENDANT SMITH: Thank you, sir.

9 THE COURT: Good luck to you. We'll see you in 90  
10 days.

11 (End of proceedings, 12:25 p.m.)

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**I N D E X**

16 Witnesses:	Direct	Cross	Redirect	Recross
17 Linda Warner	5	11		
18 Lyles Arnold	17	26		

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**CERTIFICATE**

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I certify that the foregoing is a correct transcript from  
the record of proceedings in the above-entitled matter, and  
that the transcript was prepared by me and under my  
supervision.

4

s/ Ana P. Warren  
Ana P. Warren, CSR #2302  
U.S. District Court Reporter

April 1, 2019

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Date

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